

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1904.

No. 1379

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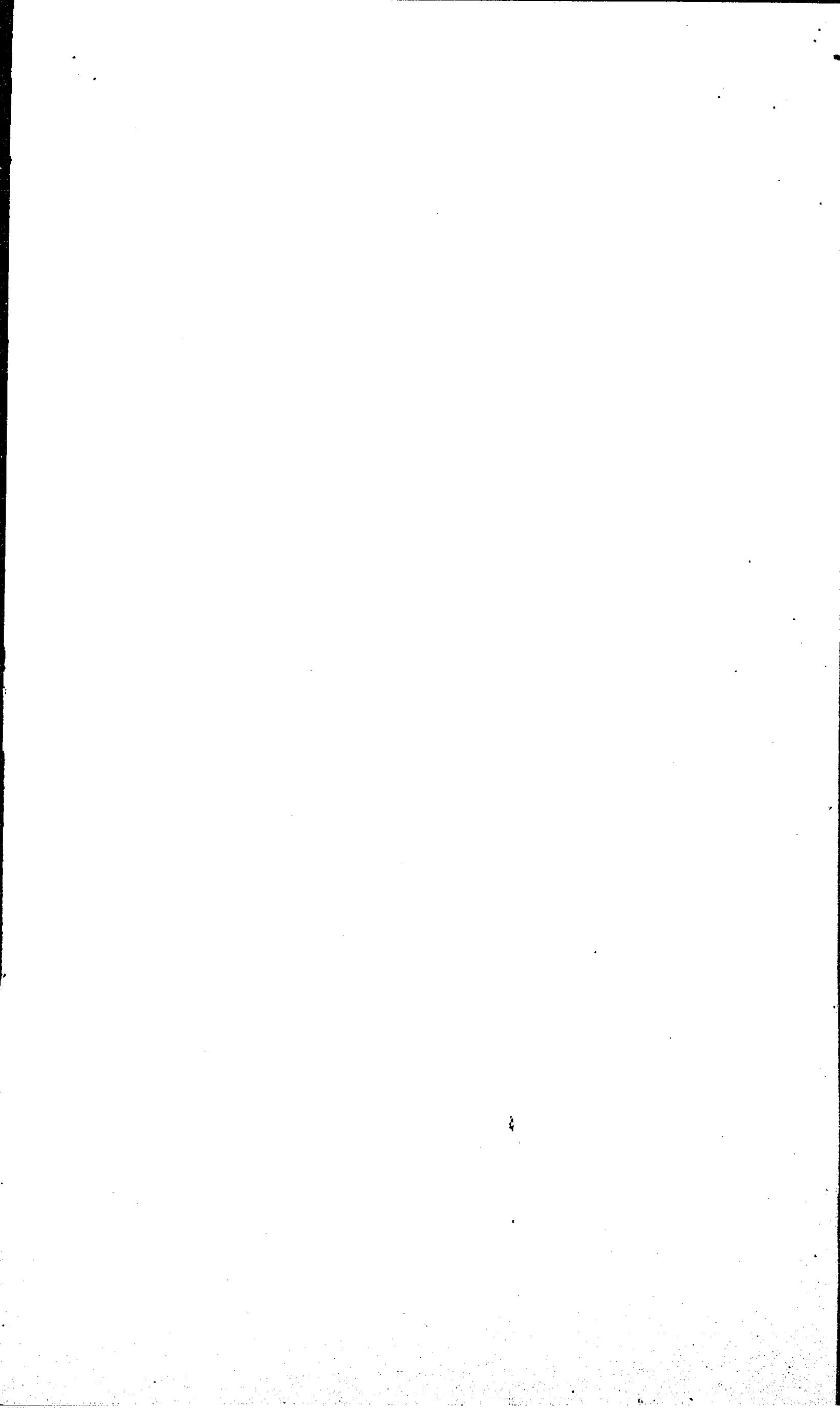
CHARLES E. DAWSON AND JULIA DAWSON, APPELLANTS,

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THOMAS E. WAGGAMAN, COLLECTOR OF THE ESTATE
OF BRIDGET GLEASON, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 16, 1903.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1904.

No. 1379.

CHARLES E. DAWSON AND JULIA DAWSON, APPELLANTS,

vs.

THOMAS E. WAGGAMAN, COLLECTOR OF THE ESTATE
OF BRIDGET GLEASON, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Declaration.....	1	1
Memorandum as to issuance of writ of replevin.....	3	3
Plea.....	3	3
Joinder of issue.....	4	3
Memorandum as to verdict.....	4	4
Judgment, appeal, and penalty of appeal bond fixed and time ex- tended to file transcript.	5	4
Memorandum: Appeal bond filed.....	6	4
Memorandum: Term prolonged to settle exceptions and time ex- tended to file transcript.....	6	4
Bill of exceptions made part of record and time to file transcript ex- tended.....	6	5

INDEX.

	Original.	Print
Bill of exceptions.....	7 -	5
Testimony of Clarence B. Rheem.....	7	5
Rev. Patrick J. O'Connell.....	7	5
Irving Williamson.....	8	6
Will of Bridget Gleason.....	10	7
Testimony of Thomas E. Waggaman.....	13	8
Julia Dawson.....	13	8
Charles E. Dawson.....	14	9
Court's charge to jury.....	15	10
Clerk's certificate.....	19	11

In the Court of Appeals of the District of Columbia.

CHARLES E. DAWSON ET AL., Appellants,
vs.
THOMAS E. WAGGAMAN, Collector of the Estate of Bridget Gleason, Deceased. } No. 1379.

a Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Collector of the Estate of Bridget Gleason, Deceased, Plaintiff,
vs.
CHARLES E. DAWSON and JULIA DAWSON, Defendants. } No. 44400. At Law.

UNITED STATES OF AMERICA, { ss:
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration.*

Filed December 31, 1900.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Collector of the Estate of Bridget Gleason, Deceased, vs.
CHARLES E. DAWSON and JULIA DAWSON. } At Law. No. 44400.

The plaintiff, Thomas E. Waggaman, having been duly appointed collector of the estate of Bridget Gleason, deceased, by the supreme court of the District of Columbia, holding a special term for orphans' court business, and having duly qualified as such, and received his letters, by virtue of and in compliance with further order, of said supreme court of the District of Columbia, holding a special term for orphans' court business, passed on the 21st day of December, A. D. 1900, in the matter of the estate of said Bridget Gleason,

sues the defendant for unjustly detaining certain assets of the estate of said Bridget Gleason, to wit, a promissory note dated November 10, 1892, for thirty-five hundred dollars (\$3500), made by E. M. Willis, and secured by deed of trust on part of lot 15 in square 263, Washington, D. C. Two (2) notes, both dated March 27th, 1894, made by N. T. Haller for three hundred and four hundred dollars, (\$300.) and (\$400.), respectively, and secured by deed of trust, respectively, on lots 142 and 143 in square 133, Washington, D. C. Note dated April 23, 1896, for five hundred dollars (\$500.) made by F. A. Blundon and secured by a deed of trust on lot 111, block 3, West Eckington, District of Columbia. Note dated December 30th, 1898,
 2 for twenty-five hundred dollars (\$2500.) made by W. A. Faulkner and secured by a deed of trust on lots 22, 29 and 35, block 72, and lot 31 block 83 Petworth, District of Columbia. Note dated January 24th, 1900 for eight hundred dollars (\$800.) made by M. D. Hensey and secured by deed of trust on lot 32, block 5 Washington Heights, District of Columbia, all of said notes being of the value of, to wit nine thousand dollars (\$9000). And the plaintiff claims that the same be taken from the defendants and delivered to him; or if they are eloigned that he may have judgment for their said value, and all mesne profits and damages, which he estimates at five hundred dollars (\$500.) besides costs.

WM. F. MATTINGLY,
IRVING WILLIAMSON,
Attorneys for Plaintiff.

Affidavit.

DISTRICT OF COLUMBIA, ss :

Thomas E. Waggaman, being duly sworn, deposes and says that according to affiant's information and belief he, the plaintiff in the above entitled cause, is entitled to recover possession of the chattels proposed to be replevied, being the same described in the declaration; that the defendants detain the same, and that said chattels are not subject to such detention, and were not taken upon any writ of replevin.

THOS. E. WAGGAMAN.

Subscribed and sworn to before me this 31st day of December, 1900.

J. R. YOUNG, *Clerk,*
By ALF G. BUHRMAN, *Ass't Cl'k.*

3 The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

WM. F. MATTINGLY,
IRVING WILLIAMSON,
Attorneys for Plaintiff.

Memorandum.

December 31, 1900.—Writ of replevin issued, returned January 2, 1901, served defendants—“Property eloigned.”

Plea.

Filed January 10, 1901.

In the Supreme Court of the District of Columbia, the 10th Day of January, A. D. 1901.

THOMAS E. WAGGAMAN, Collector, Plaintiff, } At Law. No. 44400,
vs. } Doc. 48.
CHARLES E. DAWSON ET AL., Defendant. }

Now come the defendants and say that they are not guilty in manner and form as in said declaration alleged.

LAMBERT & LAMBERT,
D. W. BAKER,
Attorneys for Defendant.

4

Joinder of Issue, &c.

Filed December 27, 1901.

In the Supreme Court of the District of Columbia, the 27th Day of December, 1901.

THOS. E. WAGGAMAN, Collector, &c., Plaintiff, } At Law. No. 44400,
vs. } Docket No. 48.
CHARLES E. DAWSON & JULIA DAWSON, Defendants. }

The plaintiff joins issue on the plea of the defendants.

WM. F. MATTINGLY,
IRVING WILLIAMSON,
Attorney- for —.

To Messrs. Lambert & Baker, attorneys for defendants:

Take notice that the issue joined in the above entitled case will be heard at the next term of this court.

WM. F. MATTINGLY,
IRVING WILLIAMSON,
Attorney- for Plaintiff.

Memorandum.

May 21, 1903.—Verdict for plaintiff for possession of property and one cent damages.

Supreme Court of the District of Columbia.

TUESDAY, June 30th, 1903.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * *

THOMAS E. WAGGAMAN, Collector of the Es-
tate of Bridget Gleason, Deceased, Plaintiff,

vs.

CHARLES E. DAWSON and JULIA DAWSON,
Defendants.

No. 44400. At Law.

Upon consideration of defendants' motion for a new trial herein, it is ordered that the same be, and it is hereby overruled, and judgment on verdict is ordered: thereupon, it is considered and adjudged that the plaintiff herein recover possession of the promissory notes herein replevied, and one cent damages as herein aforesaid assessed, together with his costs of suit to be taxed by the clerk, and have execution therefor.

From the foregoing judgment, the defendants by their attorneys, in open court, note an appeal to the Court of Appeals of the District of Columbia, and pray that bond be fixed: whereupon it is ordered that the said defendants shall furnish a bond for costs on such appeal, with surety or sureties to be approved by this court in the penalty of one hundred (100) dollars.

Further, upon motion, it is ordered that the time for settling the bill of exceptions herein, and also for filing a transcript of the record herein in the Court of Appeals be and it is hereby extended to and including October 5th, 1903.

Memoranda.

July 15, 1903.—Appeal bond filed.

September 23, 1903.—October term prolonged 38 days to settle exceptions and time to file transcript extended till November 1, 1903.

Supreme Court of the District of Columbia.

FRIDAY, October 23, 1903.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * *

THOMAS E. WAGGAMAN, Collector, }
vs. }
CHARLES E. DAWSON and JULIA DAWSON, } No. 44400. At Law.
Defendants. }

Come now the defendants herein by their attorneys, and presenting to the court their bill of exceptions taken at the trial of this cause, pray that the same be signed and sealed, now for then, which is accordingly done, and the time to file transcript in Court of Appeals extended to November 16th, inclusive.

7

Bill of Exceptions.

Filed October 23, 1903.

In the Supreme Court of the District of Columbia.

THOMAS E. WAGGAMAN, Collector of the Estate of Bridget Gleason, Deceased, Plaintiff, }
vs. } At Law. No. 44400.
CHARLES E. DAWSON and JULIA DAWSON, Defendants. }

Be it remembered that at the trial of this cause, the plaintiff, in order to maintain the issue on his part joined, produced as a witness CLARENCE B. RHEEM, who testified in substance as follows: That Bridget Gleason, during her life time, purchased of the firm of B. H. Warner and Company several notes of different dates, and that her dealings with Warner and Company extended over a period of ten or twelve years. Thereupon, certain notes were identified as having been so purchased by said Bridget Gleason and delivered to her, which said notes corresponded with the notes set out in the declaration, all of said notes being produced, except one note, which had been paid to the receivers. Said notes being payable to the order of said Bridget Gleason but not endorsed by her.

Thereupon, Reverend PATRICK J. O'CONNELL was produced as a witness, who testified that Bridget Gleason was one of his parishioners, he being a priest of the Catholic church, and assistant pastor

in the parish where she lived ; that he was attending Mrs. Gleason in spiritual matters during her last illness, and while at her house saw Mrs. Dawson there a few days before Mrs. Gleason's death,

and was asked by Mrs. Dawson, if he knew what provision
8 she had made, or disposition she had made of her property.

Witness told her he did not, and Mrs. Dawson said she was afraid Mrs. Gleason hadn't done something of the kind, and I told her it was entirely out of my line to suggest anything of the kind, except that she should make a will, she said she was afraid her affairs were not settled. Witness then went back to Mrs. Gleason and said to her: " You are very ill, indeed ; you know that you should fix your affairs," and she says, " I have settled them." Then he said, " Have you made a will ? " and she replied, " Yes." Then he said, " You are perfectly satisfied ? " and she replied, " I am." On cross examination witness testified that he did not know anything about the contents of the will, and that this conversation took place a few days before the old lady died ; that it was anyhow within a week before her death.

Thereupon, IRVING WILLIAMSON, a witness, being duly sworn, testified that he knew the late Bridget Gleason ; that she died about the 8th of November, 1900 ; that he was attorney for Thomas E. Waggaman, and that he prepared the will of Bridget Gleason at her house ; Mr. Waggaman was there ; that Mr. Waggaman made a great many investments for her, but never examined the books to ascertain the exact amount ; that the will was prepared in June previous to her death ; that he only saw her once after the making of the will ; the will was kept in Mr. Waggaman's safe ; that he never saw the notes until after he was appointed receiver, and thereupon he was questioned as follows by Mr. Mattingly, the will of Bridget Gleason having been brought into court.

9 " Q. State whether that is the will of Bridget Gleason filed by you after her death in the probate court ? A. It is, sir.

Q. Is that in your handwriting ? A. It is. It was written at Mrs. Gleason's house from directions received from her.

Q. At that time did she tell you what her estate consisted of ? A. She told me exactly what her estate consisted of, and said she wanted it disposed of in this way.

Q. What did she say her estate consisted of ? A. She said her estate consisted of, as I remember it, nearly forty-five hundred dollars in Mr. Waggaman's hands, and eight thousand dollars of notes, which she said represented loans made by B. H. Warner & Company, and when the legacies were called for I told her that in the process of noting down the legacies that she desired—that they amounted to something about \$10,000 and she had her estate consisting of twelve thousand and odd dollars, and she said that the remainder she would give to those children by way of residue.

Q. Was the will executed by her in your presence ? A. It was, and in the presence of the other two witnesses.

Q. Is that your signature to it as a witness? A. It is.

Q. Could she write? A. She could not write. She made her mark."

Thereupon, counsel for the plaintiff offered in evidence the
10 will of Bridget Gleason, as a declaration by the decedent,
which said will is in the following words:

"I, Bridget Gleason, widow, of the District of Columbia, do make
this my last will and testament, hereby revoking all former wills
by me made.

Item 1. I direct my executor hereinafter named to purchase a
lot in Mt. Olivet cemetery, in the District of Columbia, and to have
my body interred therein, the cost thereof, including the expense of
a headstone and a high mass, to be paid out of my personal estate.

Item 2. I give and bequeath to Thomas E. Waggaman the sum
of three thousand dollars to be by him invested in the purchase of
a house and lot in the city of Washington, which he shall hold in
trust for Elizabeth Dawson, daughter of my niece, Julia Dawson,
paying the net income for the benefit of said Elizabeth until she
attains the age of 21 years, when he shall convey said property to
her in fee simple.

Item 3. I give and bequeath unto Teresa Dawson, sister of said
Elizabeth, the sum of two thousand dollars, which sum is to be held
in trust for her and invested by said Waggaman, who shall pay to
said Teresa the income until she attains the age of 21, when, if in
his judgment it is best to do so, he may pay the principal to her,
otherwise he is to continue the investment, paying her the interest
until such time as he thinks best to pay said principal to her.

11 Item 4. I give and bequeath to my niece Annie Hannon,
and to Edward Hannon, her son, each the sum of two hun-
dred and fifty dollars.

Item 5. I direct my executor hereinafter named to invest the sum
of \$4,000, and the interest accruing thereon for the period of 20
years he shall expend for masses for the repose of the soul of my
husband; and at the expiration of said period the said sum shall
form a part of the residue of my estate.

Item 6. I give and bequeath unto Father O'Connell, assistant
pastor of St. Stephens church, Washington, D. C., the sum of five
hundred dollars for his own use and benefit.

Item 7. The residue of my estate I give and bequeath to said
Elizabeth and Teresa Dawson absolutely and in fee simple, share
and share alike, and I appoint said Waggaman trustee to hold the
same until they respectively attain the age of 21 years.

And I do appoint Thomas E. Waggaman of said District the
executor of this will.

In testimony whereof I have hereunto set my hand and affixed
my seal this first day of June, A. D. 1900.

her
BRIDGET x GLEASON. [SEAL.]
mark.

Signed, sealed, published and declared by the above named testatrix, Bridget Gleason, as and for her last will and testament in our presence, who at her request, in her presence and in the presence of each other, have subscribed our names hereto as witnesses this first day of June, 1900.

IRVING WILLIAMSON.
JAMES B. NICHOLSON.
LEONARD L. NICHOLSON, JR."

12 Counsel for defendants objected on the ground that said will cannot be offered as a declaration of the decedent, on the ground that it was too remote from the transaction in this case, and could not in any way be considered as a part of the *res gestæ*, and was therefore inadmissible, and moved to strike out all the evidence of Mr. Williamson surrounding the making of the will, on the ground that such testimony was inadmissible for same reason, but the court overruled said objection, and permitted the plaintiff to offer in evidence the will, and refused to strike out the evidence of said Williamson surrounding the making of the will, and to the ruling of the court in admitting said will in evidence, and its refusal to strike out the testimony of said Williamson, counsel for the defendant- separately noted an exception.

Thereupon, counsel for plaintiff offered in evidence a decree of the supreme court of the District of Columbia, holding a probate court, *in re* estate of Bridget Gleason, deceased, No. 9860, passed on December 21, 1900, appointing Thomas E. Waggaman as collector of the estate of said Bridget Gleason, and directing him to institute and prosecute such proceedings as he might be advised, in order to try the title to the promissory notes referred to in the declaration, and recover the same as assets of said estate, should they be such.

Thereupon, it was agreed by counsel that an equity suit had been filed by said collector in said supreme court against the defendants in this cause, and a decree entered by consent by which the notes involved in this cause were turned over by said Julia Dawson to certain receivers to be held pending the final determination of this case.

13 Plaintiff, further, by the testimony of witnesses Irving Williamson and Thomas E. Waggaman, offered evidence tending to prove that after the death of Bridget Gleason the defendants were asked if they knew where the notes aggregating \$8,000., being the same in suit, were, to which they replied that they knew nothing of the notes, and had never seen them or heard of them.

Defendants, in order to maintain the issue on their part joined produced three witnesses who testified as to the relationship that existed between Mrs. Gleason and the defendant Julia Dawson. Thereupon, the defendant, JULIA DAWSON was sworn and testified that she was a niece of said Gleason, and lived with her from the time she was nine years of age until she was married at the age of

sixteen years; that she visited Mrs. Gleason off and on up to the time of her last sickness, and that she was taken seriously ill on the Saturday before she died. Witness was called on the next day, Sunday, and on that morning, she went to the house and took care of her until her death; that her husband and children came during the evening to the house, but otherwise witness was the only person who was caring for Mrs. Gleason. Thereupon, she was asked the following question:

"Q. State whether or not you had any conversation with Mrs. Gleason on the days that you were there taking care of her? Did you converse with her? A. Oh yes, sir.

"Q. Will you state the subject matter of those conversations?"

14 Thereupon, objection was made to the question, and then counsel for the defendants made the following offer:

"We offer to prove that this witness would answer 'yes' to the question put to her with regard to whether or not she overheard a conversation of the deceased with her husband, and we now offer to prove the subject matter of that conversation." Which said question and offer of testimony was objected to on the ground that it was inadmissible under section 1064 of the Code of said District, which objections were sustained and exception noted.

Witness thereupon identified the notes in suit and stated that she claimed them and that she had stated to the plaintiff, after the death of her aunt, that the notes were to gift to her from her aunt; that her aunt was eighty-five years of age at the time of her death, and that she died of pneumonia. She denied that in any conversation had after death of Mrs. Gleason, she denied knowledge of said notes.

Thereupon, CHARLES E. DAWSON, one of the defendants, testified over objection by plaintiff, that he was the husband of his co-defendant, and that he had no interest at all in the notes, nor any interest in the action of replevin, and that the only time he had possession of the notes was on the night of Wednesday, the 7th of November, between 9 and 10 o'clock, until he put them in the bureau drawer at his home; they were given to him by his wife, and the next morning he placed them in the drawer; he then testified to witnessing the gift of the notes on said Wednesday night by Bridget Gleason to his wife, and identified the notes in suit as the notes then given. That when he

15 went into Mrs. Gleason's room, being called there by his wife, he saw Mrs. Gleason with an envelope in her hand, she holding one end of it and his wife holding the other. Mrs. Gleason said: "Julia, here is those notes." And she said: "I have invested this money for you to buy you a home." And she said, "When the interest is due, you take those notes to Mr. Warner and tell Mr. Warner you are my niece, and for him to treat you as he"

has treated me." Then Mrs. Gleason handed the notes to the witness' wife, who handed them to him, and he put them in his inside pocket and kept them. That Mrs. Gleason died next morning, Thursday, at three o'clock, and the funeral was on Saturday, the 10th of November. He also denied that in any conversation had after death of Mrs. Gleason, he denied knowledge of the notes.

Thereupon the court charged the jury as follows: Now, gentlemen, you understand the character of this case as explained to you in the first prayer, as granted.

"The jury are instructed, as matter of law, that the only question for them to decide in this case is whether or not the deceased, Bridget Gleason, made a *donatio causa mortis* of the notes mentioned in the declaration, to the defendant, Julia Dawson, and if they find by a preponderance of the evidence that the said notes were by the said Bridget Gleason given during her lifetime in contemplation of death, to Julia Dawson, and that the said notes were delivered by the said Bridget Gleason to the said Julia Dawson, then they are instructed as matter of law that their verdict should be for the defendant."

That is to say, gentlemen, that the question for you now is whether in apprehension of death Bridget Gleason gave the notes in suit here to the defendant, Mrs. Dawson. Now, that is what this case is about, as you have understood it. That is the sole issue here. Now, I ought to say to you, gentlemen, that you, in a case of this character, must take all the circumstances; you must scrutinize the evidence in this case carefully, and you must be satisfied by a preponderance of proof in this case that Bridget Gleason gave these notes to Mrs. Dawson under the apprehension of death.

Now, the burden is upon the defendants in this case to show that fact to you. That is the only fact in this case, and I have cautioned you that you must weigh carefully the testimony in this case, and scrutinize it, and decide by what you believe to be a preponderance of the evidence, weighing all the testimony, and being satisfied by a preponderance of the evidence.

Now, if you are satisfied in this way, then the defendants are entitled to a verdict in this case. If you are not, then the plaintiff is entitled to a verdict.

I ought to say to you, in connection with this testimony that you are

"Instructed as matter of law that although the said Bridget Gleason made her will on June 1st, and attempted to dispose of part or all of her property, that she had a right at any time before her death, either by a gift, another will or destruction of her will, to do away with its effect, and that the said will is admitted in evidence only for the purpose of showing, at the time it was made, what the said Bridget Gleason, at that time, intended to do with certain of her property."

That is to say, I am merely to say to you, as matter of law, that if a person makes a will they are not compelled to stand by 17 that will; they may change it, and they may destroy it entirely, or make a new will, or they may dispose of it in their lifetime, all the property that they have conveyed by that will, and that the said will is admitted in evidence only for the purpose of showing, at the time it was made, what the said Bridget Gleason at that time intended to do with certain of her property. That is, that the will is admitted in evidence for the purpose of showing what was her intention at the time she made this will, and the manner of disposing of her property.' If you should find from the evidence that since that time she made — statement, why then those statements go as the will goes as to the disposition of the property, and are weighed, as other evidence is weighed in the case, in respect to the intention of this decedent.

So that, you are to take all the facts and circumstances in the case, and then determine whether you are satisfied by a preponderance of the evidence that Bridget Gleason did give those notes in suit to the defendant, or, if she did, then the defendants are entitled to your verdict. If she did not, then the plaintiffs are entitled to your verdict in this case. Now, that is the sole question before you.

Gentlemen, I have prepared, or had the clerk prepare a sealed verdict in this case, and have added a little more than we usually do in these sealed verdicts, because I have added these words—the clerk has added them—at my suggestion. If they find for the plaintiffs they find for the possession of goods replevined and one cent damages. You will have those words written in. If they find for the defendants, you will just simply say you find for the defendants—two defendants in this case.

18 All of which said exceptions were duly noted by the court at the time the same were taken, and are by the court signed and sealed this 23rd day of October, A. D. 1903, *nunc pro tunc*.

HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

19 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 18, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 44,400, at law, wherein Thomas E. Waggaman, collector

of the estate of Bridget Gleason, deceased, is plaintiff, and Charles E. Dawson *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District, this
Columbia. 12th day of November, A. D. 1903.

JOHN R. YOUNG, Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1379. Charles E. Dawson *et al.*, appellants, vs. Thomas E. Wagga- man, collector of the estate of Bridget Gleason, deceased. Court of Appeals, District of Columbia. Filed Nov. 16, 1903. Robert Willett, clerk.

